E/2006/45
E/C.18/2006/10

United Nations

Committee of Experts on International Cooperation in Tax Matters

Report on the second session (30 October-3 November 2006)

Economic and Social Council
Official Records 2006
Supplement No. 45

Economic and Social Council
Official Records, 2006
Supplement No. 45

Committee of Experts on International Cooperation in Tax Matters

Report on the second session (30 October-3 November 2006)

United Nations • New York, 2007

Note

Symbols of United Nations documents are composed of capital letters combined with figures.

Summary

The present report contains the conclusions and recommendations of the second session of the Committee of Experts on International Cooperation in Tax Matters, held at the United Nations Office at Geneva from 30 October to 3 November 2006. The Committee, which was established by the Economic and Social Council in its resolution 2004/69, consists of 25 experts appointed in their personal capacity for a four-year period. The Committee dealt with the following substantive items: (a) improper use of treaties; (b) mutual assistance in collection of taxes; (c) definition of permanent establishment; (d) taxation of development projects; (e) exchange of information; (f) revision of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries; (g) treatment of Islamic financial instruments; and (h) dispute resolution.

On the basis of the discussion of the above-mentioned topics, the Committee also produced a set of conclusions and recommendations for consideration by the Economic and Social Council, Member States and the United Nations Secretariat.

Contents

Chapter		*Paragraphs*	*Pag*
I.	Introduction	1–6	
II.	Organization of the session	7–17	
	A. Opening of the session by the Chairperson of the Committee	7	
	B. Adoption of the agenda	8	
	C. Election of Vice-Rapporteur	9	
	D. Consideration of rules of procedure and other organizational issues	10–14	
	E. Status of the United Nations Model Double Taxation Convention between Developed and Developing Countries	15–16	
	F. Draft resolution for adoption by the Economic and Social Council	17	
III.	Discussion on substantive issues related to international cooperation in tax matters	18–60	
	A. Improper use of treaties	18–20	
	B. Mutual assistance in collection of taxes	21–23	
	C. Definition of permanent establishment	24–29	
	D. Taxation of development projects	30–35	
	E. Exchange of information	36–46	
	F. Revision of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries	47–50	
	G. Treatment of Islamic financial instruments	51–56	
	H. Dispute resolution	57–60	
IV.	Dates and agenda for the third session of the Committee	61–66	
V.	Adoption of the report on the second session to be submitted to the Economic and Social Council	67	
VI.	Conclusions and policy recommendations	68–78	
Annex			
	Draft resolution recommended for adoption by the Economic and Social Council		

Chapter I
Introduction

1. Pursuant to Economic and Social Council resolution 2004/69, the second session of the Committee of Experts on International Cooperation in Tax Matters was held in Geneva from 30 October to 3 November 2006.

2. The second session of the Committee of Experts was attended by 22 tax experts and 109 observers. The following members of the Committee of Experts attended the session: Moftah Jassim Al-Moftah (Qatar), Bernell L. Arrindell (Barbados), Noureddine Bensouda (Morocco), Rowena G. Bethel (Bahamas), Patricia A. Brown (United States of America), José Antonio Bustos Buiza (Spain), Paolo Ciocca (Italy), Andrew Dawson (United Kingdom of Great Britain and Northern Ireland), Nahil L. Hirsh (Peru), Armando Lara Yaffar (Mexico), Frank Mullen (Ireland), Kyung Geun Lee (Republic of Korea), Tizhong Liao (China), Habiba Louati (Tunisia), Ronald Peter van der Merwe (South Africa), Dmitry Vladimirovich Nikolaev (Russian Federation), Pascal Saint-Amans (France), Serafin U. Salvador, Jr. (Philippines), Erwin Silitonga (Indonesia), Stig Sollund (Norway), Robert Waldburger (Switzerland) and Eduardo Zaidensztat Capnikas (Uruguay).

3. The session was also attended by observers from Albania, Australia, Azerbaijan, Barbados, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Cameroon, Chile, Croatia, Czech Republic, Denmark, Germany, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kuwait, Latvia, Liechtenstein, Malaysia, Monaco, Morocco, the Netherlands, Nicaragua, Norway, Oman, Pakistan, Qatar, Romania, Saudi Arabia, Senegal, Serbia, Singapore, Spain, Sudan, Thailand, Timor-Leste, Trinidad and Tobago, Turkey, the United States of America, Viet Nam and Yemen. In addition, there were observers from the Cayman Islands (Overseas Territory of the United Kingdom) and the Isle of Man (Crown Dependency of the United Kingdom).

4. The session was also attended by observers from the following intergovernmental organizations: the Commonwealth Secretariat, the European Commission, the Inter-American Center of Tax Administrations (CIAT), the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD).

5. The session was also attended by observers from other entities as follows: the International Chamber of Commerce, International Bureau of Fiscal Documentation, the Tax Justice Network and the Visiting International Faculty Program. The following participants also attended the session in their personal capacity: Dan Badin, Jon E. Bischel, Frank L. Brunetti, Stephen R. Crow, David Davies, Ghislain T. J. Joseph, Bruno Gurtner, Woo Taik Kim, Michael J. McIntyre, Toshio Miyatake, Yoon Oh, Moo Seok Ok, Sol Picciotto, Prem Sikka, Hans Pijl and Ji Hyun Yoon.

6. The amended agenda for the second session was as follows:

1. Opening of the session by the Chairperson of the Committee.
2. Adoption of the agenda and organization of work (E/C.18/2006/1/Rev.1).
3. Discussion of substantive issues related to international cooperation in tax matters:
   (a) Treaty abuses (E/C.18/2006/2 and Add.1);

(b) Mutual assistance in collection of taxes (E/C.18/2006/3);

(c) Definition of permanent establishment (E/C.18/2006/4);

(d) Taxation of development projects (E/C.18/2006/5);

(e) Exchange of information (E/C.18/2006/6 and Add.1-3);

(f) Revision of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (E/C.18/2006/7);

(g) Dispute resolution (E/C.18/2006/8);

(h) Definition of interest (E/C.18/2006/9).

4. Dates and agenda for the third session of the Committee.

5. Adoption of the report of the Committee on its second session.

Chapter II
Organization of the session

A. Opening of the session by the Chairperson of the Committee

7. On 30 October 2006, the 1st meeting of the second session of the Committee was opened in Geneva by Noureddine Bensouda, Chairperson of the Committee.

B. Adoption of the agenda

8. After discussion, the agenda was agreed to as proposed by consensus, recognizing that some flexibility was necessary. In the session, the item entitled "Definition of interest" (renamed "Treatment of Islamic financial instruments" as noted below in para. 54) was treated as item (g) and "Dispute resolution" was treated as item (h), following a reversal in the order of their consideration.

C. Election of Vice-Rapporteur

9. The Chairperson asked for nominations for Vice-Rapporteur. The group elected Bernell Arrindell as the Vice-Rapporteur. In accordance with the decision taken at the first session, Pascal Saint-Amans was Rapporteur for the second session. It was also decided that the Rapporteur's reports at the beginning of each day should be concise, yet sufficiently reflect both majority and minority views.

D. Consideration of rules of procedure and other organizational issues

10. The Secretariat (Oscar de Rojas) announced the appointment of two new members: Nobuyuki Nakamura from Japan, replacing Yoshiki Takeuchi, and Eduardo Zaidensztat Capnikas, from Uruguay, replacing Talmon de Paula Freitas. The appointments of Manuel F. Montes and Michael Lennard to the Secretariat were also announced.

11. Mr. de Rojas also mentioned the setting-up of a trust fund for enhancing the capacity for tax administration in developing countries. The fund still awaits contributions from member countries. The delegate from Pakistan indicated that his country was interested in hosting a United Nations training workshop. Viet Nam mentioned its existing offer to host a training workshop. On budgetary issues generally, it was noted that some of the subcommittees would need to meet at least once each to settle drafting issues, with priority to the permanent establishment and improper use of treaties subcommittees and with special reference to the need for developing country participation in such meetings. Therefore, it was agreed that funding was needed.

12. The implementation of the "no objection" rule to the participation of private and non-governmental organization observers was raised. It was decided that the rule would be followed to the letter.

13. The Committee met in closed meetings to consider certain procedural matters. It was decided that the composition of subcommittees would be decided on a case-by-case basis, bearing in mind the following broad principles. When the decision to set up a subcommittee was made, the Chair would call for candidates from among members of the Committee as well as observers. In closed meeting, the Committee would decide on a coordinator and then consider the candidatures after seeking the advice of the coordinator. The decisions would be guided by the following:

(a) The subcommittee should be limited to a number of participants that ensures effectiveness. Priority will be given to the members of the Committee;

(b) On the other hand, it is recognized that, to effectively perform their mandates, subcommittees will need to draw upon wider expertise that is available among observers;

(c) The need to ensure a balanced representation (as to developed and developing countries, geographical balance, members of the Committee and observers) will be taken into account.

14. In respect of other procedural matters, it was confirmed that the process of developing documents for the consideration by the Committee should be as follows:

(a) Each subcommittee will draft a report under the responsibility of the coordinator;

(b) The coordinator will ask the Secretariat to provide electronically to all the participants to the meetings of the Committee the document calling for comments to be addressed to the coordinator within a time agreed by the coordinator. The Secretariat will similarly provide the documents to other interested parties as indicated in consultation with member countries;

(c) The subcommittee will prepare a further draft for the Committee's annual session after considering comments made in the relevant time period, for decision or discussion;

(d) The documents will be submitted to the Secretariat in time to be translated and made available in their final form;

(e) The Secretariat will inform the coordinators of the timing requirements.

E. Status of the United Nations Model Double Taxation Convention between Developed and Developing Countries

15. In response to an issue that arose several times in the discussion, a representative of the Secretariat indicated that the United Nations Model had no legal status. He nevertheless indicated that the Committee was free to endorse it or put it forward to the Economic and Social Council with a view to its becoming an intergovernmental instrument.

16. **The Committee decided that the United Nations Model should remain a guidance document and recognized that the Committee is responsible for updating it.**

F. Draft resolution for adoption by the Economic and Social Council

17. The Committee discussed a draft resolution to be submitted for adoption by the Economic and Social Council that reflects the outcomes of the session of the Committee. The draft text is annexed to the report.

Chapter III

Discussion on substantive issues related to international cooperation in tax matters

A. Improper use of treaties (formerly "treaty abuses")

18. Mr. Lee, coordinator of what was originally formed as the subcommittee on treaty abuses, made a PowerPoint presentation summarizing the work of the subcommittee. A thorough discussion took place. As part of that discussion it was decided that the item should henceforward be referred to as "improper use of treaties" to better reflect the content, and that the subcommittee's name would be changed to the subcommittee on improper use of treaties to reflect that.

19. **It was decided that the subcommittee should continue its work according to the following mandate: drafting a new Commentary on article 1 of the United Nations Model that would include both practical examples and possible wording of anti-abuse clauses focusing on improper use by taxpayers. It was suggested that in choosing the examples, particular reference should be made to misuses affecting developing countries and to responses which would be feasible for such countries. Attention should also be paid to the relationship between treaties and domestic anti-abuse rules. To better reflect its work, the subcommittee would henceforth be referred to as the subcommittee on improper use of treaties.**

20. **It was also decided that Bernell Arrindell would join the subcommittee.**

B. Mutual assistance in collection of taxes

21. Mr. Saint-Amans made a presentation on the work of the subcommittee, which proposed a new article 27 to be added to the United Nations Model. The article would restrict assistance in collection of taxes to residents of the Contracting States and to taxes covered by the Treaty. A short discussion took place, in which there was consensus for extending the scope of the article to all taxes, not only those generally covered by the Treaty. The coordinator was invited to redraft the article and its Commentary accordingly.

22. A new draft article, together with its Commentary, taking into account the discussion was re-presented to the Committee. The article is similar to the OECD article 27 but the Commentary further develops specific issues of interest to developing countries — notably, with regard to the sharing of costs.

23. **The Committee adopted the article and its Commentary for inclusion in the next version of the United Nations Model.**

C. Definition of permanent establishment

24. Stig Sollund and Hans Pijl made a presentation on the work of the subcommittee. A thorough discussion took place on that issue, which was regarded as a critical one. The discussion went further than the strict issue of the definition of "permanent establishment".

25. The conclusions of the subcommittee, with regard to changes in the Commentary, were agreed.

26. The main issues that arose in the discussion were as follows:

(a) Whether article 14 ("Independent personal services") should be deleted sand reliance placed on article 5, and if so, what adjustments might be needed to the Model. It was stated that any such change would need special attention, given the fact that the United Nations Model differs from the OECD Model with regard to the time test in particular;

(b) How to ensure proper taxation of services as a whole. The issue of technical fees — whether they should be dealt with under the royalties article — was considered as part of the broader topic, though not relating specifically to the definition of permanent establishment;

(c) Whether there was a need for clarification of the basis on which taxes are assessed at source, whether on a gross or net basis. It was noted that that could be a significant issue as articles 14 and 7 are not worded in the same way in regard to the basis of taxation (being income in the former case and profit in the latter), and therefore it is possible that there would be a different result between the two articles. Some expressed the views that the question is not relevant and should not be addressed any further.

27. As for some other items, there was a general discussion on the relationship between the OECD and United Nations Models. The general view was that the Committee should draw upon the expertise available, including in the OECD, without being bound to the conclusions reached elsewhere. It was recognized that the two Models were not in competition and that the Committee remained free to deviate from any other Model, taking into account the situation of developing countries.

28. **The subcommittee was invited to continue its work. Attention should primarily be paid to taxation of services related to articles 14 and 5 (including the possibility of deleting article 14 and adjusting article 5 to retain an appropriate balance of the taxing rights currently available under article 14) and to taxation of technical fees. As a subsidiary part of its work, the subcommittee will also address the question of taxation on a net or gross basis and the possible need for definition of the terms "business" and "enterprise". The subcommittee was mandated to propose a draft article and Commentary, reflecting both its further work and what was agreed during the session. The Secretariat was asked to assist the subcommittee in its work of drafting the Commentary. It was decided that Erwin Silitonga and Eduardo Zaidenzstat Capnikas would join the subcommittee.**

29. **A number of other points, such as taxation of fisheries and electronic commerce, were also raised. The treatment of those issues was left for further consideration.**

D. Taxation of development projects

30. Victor Thuronyi made a presentation on the item. He noted that the work had been facilitated by the International Tax Dialogue, an initiative of the IMF, OECD,

the World Bank and the Inter-American Development Bank, with the United Nations participating as an observer, to encourage and facilitate discussion on tax matters among national tax officials and international organizations.

31. During the discussion strong views were expressed that those giving assistance should be prepared to meet the requirements of the tax system. On the other hand, it was recognized that donors would often insist on exemptions to ensure that the assistance they gave was not diluted, or perceived as being diluted, in which case the issue became the nature, extent and administration (including transparency) of such exemptions.

32. It was widely accepted that in achieving coherent responses it would have to be recognized that those different views often reflected the role of different participants in the assistance process, rather than different ultimate goals, and that better understanding was needed on the part of both the donor and donee to ensure that the common goals of such assistance projects were met.

33. Many participants noted that there were many different scenarios in which those issues arose, and that the question of providing exemptions might vary according to the different scenarios. It was remarked, for example, that some exemptions might be appropriate for emergency relief, whereas similar exemptions might be inappropriate in cases of infrastructure development or entry into the financial markets, because of distortions that might arise and the possible impact on domestic enterprises and workers in those sectors.

34. It was generally accepted that the Committee of Experts was the appropriate forum to deal with such an issue, although a dissenting opinion was also expressed. It was considered that some further work was needed both on the substance, notably to provide the Committee with case studies, and on the procedures. On the substance, many options were recognized as open. In any case, it was agreed that that topic was within the mandate of the Committee but that it would not be appropriate, at least at this stage, to report to the Economic and Social Council, nor to be prescriptive, as long as it was a question of behaviour rather than of rules.

35. **The Committee took note of the document and invited the International Tax Dialogue to do further work, through a process that would allow donor agencies to participate. Victor Thuronyi was invited to prepare a report on that work. The expected report would include more in-depth analysis and case studies that would highlight the impact of tax exemptions in different situations. Countries were invited to provide such case studies to Mr. Thuronyi.**

E. Exchange of information

36. José Antonio Bustos Buiza made a presentation of the documents prepared by the subcommittee. He also mentioned a draft code of conduct prepared by Michael McIntyre. All the participants acknowledged the quality of the work on exchange of information and a thorough discussion took place on the proposals made to amend article 26 of the United Nations Model.

37. Many observers, from developed and developing countries, expressed the view that strengthening exchange of information was wise policy and they therefore welcomed the proposal. It was agreed that the scope of the article should be restricted neither to residents of the Contracting States nor to taxes covered by the

Treaty. Some participants also expressed the view that it should be explicitly provided that exchange of information must be implemented notwithstanding paragraph 3 of article 26 of the existing Model.

38. Discussion focused on the proposed wording of the article. Three main items were addressed:

(a) The proposed "may be relevant" test was generally welcomed, although departing from the OECD wording. Some participants expressed their preference for "foreseeably relevant" as likely to be wider in its coverage, but it was agreed that "may be relevant" would allow effective exchange of information. There was consensus on the importance of the Commentary on the matter. It was suggested that the draft Commentary might rely upon the wording of the report (that is, paragraphs 30 and 31 may replace the wording in paragraphs 72 and 73 of the proposed Commentary) on automatic exchange of information;

(b) With regard to the disclosure to oversight bodies, some participants regretted the restriction proposed in the report. It was said that if such bodies were part of the State, they were likely to be subject to the same obligations with regard to confidentiality as the tax authorities. Some other participants were of a different view because in a number of developing countries the oversight bodies might not be subject to the same level of confidentiality. It was suggested that that could be addressed in the Commentary, which could clarify the concept and offer an alternative wording to those countries that would prefer a restricted approach because of domestic difficulties;

(c) With regard to the dual criminality requirement as drafted in the proposed paragraph 6 of draft article 26, there were different views. Some participants stated that such a clause was not necessary unless exchange of information was restricted to tax crimes. It might even weaken the efficiency of the entire article. Other participants did not share that view and supported the inclusion of such a provision in any case. Whatever solution was adopted, the alternative should be addressed in the Commentary.

39. Some participants expressed their concerns with regard to the inclusion of a reference to "combating tax avoidance" in the article, expressing the view that tax avoidance denotes conduct that was legal as opposed to tax evasion. However, there was extensive support for the proposed wording.

40. The view was expressed that the issue of legal professional privilege needed greater elaboration in the Commentary.

41. There was consensus on the need for updating the United Nations Model giving a very wide scope to exchange of information. Some participants drew the attention of the Committee to the positive impact such a change to the Model could have towards changing domestic laws and practices as well as enhancing cooperation between tax authorities. It was also suggested that the work could be extended to comprehensive agreements dedicated solely to exchange of information.

42. It was recognized that attention should be paid to the effectiveness of exchange of information, taking into account the administrative issues involved, such as administrative capability and costs, and the need to introduce consistency in the standards for information exchange that currently exist. Some participants from developing countries pointed out the lack of current resources, including expertise,

and therefore the need for technical assistance. A concern was also expressed with regard to the delays often encountered in providing information, often for purely administrative reasons. It was also mentioned that the legitimate interest of taxpayers in that area should be kept in mind.

43. Mr. McIntyre made a presentation on his work on a possible code of conduct. The principle of such a code was generally agreed as being a useful tool to encourage a higher level of compliance by taxpayers and tax cooperation.

44. It was recognized that several procedural questions were still open, such as the status of such a code and its relationship with other current initiatives, particularly in the field of money-laundering. It was agreed that further work on those aspects was needed before substantive work on the issue could be commenced.

45. It was further agreed that Mr. McIntyre would be invited to expand on his work by providing more details on what such a code of conduct would contain. The Secretariat was authorized to provide assistance on relevant United Nations procedures.

46. **The Committee invited the subcommittee to work towards finalizing the proposed article and Commentary on exchange of information in the light of the discussion, so that the Committee would be in a position to agree to the suggested changes at the next session. The Committee decided that Paolo Ciocca would join the subcommittee. The Committee also invited Mr. McIntyre to expand on his work by providing more details on what such a code of conduct would contain.**

F. Revision of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

47. Frank Brunetti and Jon Bischel made a PowerPoint presentation on the work of the working group. It was suggested that the framework of the United Nations Manual should be reorganized with a view to providing as much practical assistance as possible. It was proposed to eliminate the historical overviews, which could be moved to an annex. The revised Manual would provide Treaty negotiators with interpretations, guidance on application and suggestions pertaining to the different articles.

48. The framework of the Manual would consist of discussion of international double taxation, United Nations and OECD Model bilateral tax conventions, a chapter on international tax evasion and avoidance and another on procedural aspects of Mutual Agreement procedures. A number of Treaties would also be annexed.

49. Some questions were raised on the method used to select treaties included in the annex. It was suggested that a treaty involving a European country with the exemption method could be added. Some participants drew attention to the need to retain somewhere a historical reference concerning the development of tax treaties. It was also stated that possible loopholes in applying the treaties should be dealt with in the Manual.

50. **The Committee acknowledged the need for updating the United Nations Manual, taking into account changes to the Model and its Commentary. Emphasis was placed on the need for clarity and usefulness for treaty negotiators. It was agreed that priority should be given to the inclusion of practical examples involving treaties between both developed and developing countries, some of which could be taken from the Commentary. The working group was therefore invited to work closely with the other working groups and subcommittees charged with updating the Model, with a view to delivering to the Committee a revised Manual by the end of its term. It was agreed that membership of the working group should be expanded. It was decided that Bernell Arrindell, Rowena G. Bethel and the observer from Germany (Wolfgang Lasars) would be added.**

G. Treatment of Islamic financial instruments (formerly "Definition of interest")

51. Moftah Jassim Al-Moftah and Salah Gueydi made a presentation on the treatment of Islamic financial instruments under the United Nations Model. They indicated that Islamic finance had dramatically increased in recent years. The main characteristics of such instruments were the prohibition of interest (*riba*), uncertainty or risk (*gharar*) and gambling (*maysir*). Therefore, Islamic finance focused on profit sharing and linking finance to productivity.

52. They concluded that income from Islamic financial instruments would in principle be regarded as business income, dividends or income from immovable property, depending on the type of contract and the underlying asset. It was also noted that some countries (such as Malaysia and the United Kingdom) deemed such payments to be interest for treaty purposes.

53. In response to a question on the use of the interest article between Islamic countries, Mr. Al-Moftah responded that both traditional and Islamic banking currently coexisted. Therefore, article 11 was needed.

54. It was suggested that further comments from Islamic countries would be helpful to that work. As part of the discussion, it was also decided that the item should henceforward be referred to as "Treatment of Islamic financial instruments" to better reflect the content, and that a working group on treatment of Islamic financial instruments would be formed to address the issues.

55. It was also stated that the question of treatment under the United Nations Model related to the classical issue of characterization of income under tax treaties.

56. **It was decided that further work was needed to obtain a better understanding of the issues involved. It was felt that there should be guidance on those issues under either the Model or the Manual. That would be determined after further work was presented to the Committee. The new working group would in particular draw upon the assistance of Andrew Dawson, observers from Qatar (Salah Gueydi), the Sudan (Gabir Saad El Din), Malaysia (Khodijah Abdullah), the OECD (Jacques Sasseville) and the IMF (Victor T. Thuronyi) under the coordination of Mr. Al-Moftah. The working group would be referred to as the working group on treatment of Islamic financial instruments.**

H. Dispute resolution

57. Mr. Robert Waldburger made a presentation addressing the developments on the issue of arbitration that were taking place in different forums, such as the OECD and the European Union.

58. Most of the participants supported further work with a view to adding a provision in the Model or providing guidance in order to improve mutual agreement procedures as well as to proposing alternative methods of dispute resolution. Advance rulings, arbitration or mediation were suggested as possible alternatives for consideration. Practical aspects of those procedures were recognized as being of particular interest.

59. Although there was a dissenting opinion, there was broad support for further work on improvement in dispute resolution. Much of the value of its work would be in giving practical guidance in handling mutual agreement procedures and further forms of dispute settlements. Arbitration was considered an incentive to resolve issues effectively. Many participants made references to developments in other forums, such as the European Union, the OECD and the World Trade Organization.

60. **It was decided to set up a new subcommittee on dispute resolution to address the issue in place of the current working group. The subcommittee was invited to produce a report. Attention would be paid both to the ways of improving dispute settlement and of giving practical guidance to make mutual agreement procedures under existing treaties as effective as possible. Mr. Waldburger was appointed coordinator. The subcommittee would also comprise Habiba Louati, Frank Mullen, Pascal Saint-Amans, Serafin U. Salvador Jr., and observers from Australia (Paul McBride), Viet Nam (Dang Ngoc Minh), and the International Bureau of Fiscal Documentation (Hubertus Bierlaagh).**

Chapter IV
Dates and agenda for the third session of the Committee

61. The Committee had a general discussion on possible new items for the agenda of the third session. Different proposals were made:

(a) Partnerships;

(b) Stock options;

(c) Dual residence companies;

(d) Visiting teachers;

(e) Revision of the Commentaries;

(f) Taxation of pensions;

(g) Non-discrimination.

Of those, items (e) and (f) received the most support for discussion at the third session, and it was agreed that revision of the Commentaries would be added to the agenda for that session, while taxation of pensions would be taken up if time allowed at that session.

62. There was a general discussion on the Committee's work programme until the end of its term.

63. After the discussion, the Committee decided that the draft agenda of the third session would be as follows:

1. Improper use of treaties (5 hours).
2. Definition of permanent establishment (5 hours).
3. Taxation of development projects (1 hour).
4. Exchange of information, including code of conduct (4 hours).
5. Revision of the Manual (0.5 hours).
6. Dispute resolution (4 hours).
7. Revision of the Commentaries (4.5 hours).
8. Treatment of Islamic financial instruments (3 hours).
9. Adoption of the report (3 hours).

64. **With regard to the update of the Commentaries, it was agreed that all experts would read the Commentaries by the end of the year and identify any changes that needed to be made, such as mistakes, inconsistencies, outdated points and others. Attention would also be paid to the style and relevance of some assertions, such as those on the differences between developing and developed countries' points of view. The experts would send by e-mail their lists of proposed changes to the coordinator appointed for that purpose. Input from observers was also invited. That item would also necessitate coordination between the Secretariat and the OECD Secretariat as to the manner in which the text of OECD Commentaries was incorporated in the Commentaries to the United Nations Model.**

65. **The Committee appointed the observer from Chile (Lise-Lott Kana) as the coordinator on possible changes to the Commentaries, and the observer from Morocco (Mustapha Kharbouch) to assist.**

66. **The Committee decided to hold the third session from 29 October to 2 November 2007.**

Chapter V

Adoption of the report on the second session to be submitted to the Economic and Social Council

67. The Committee approved and adopted the present report for submission to the Economic and Social Council.

Chapter VI
Conclusions and policy recommendations

68. The following includes the conclusions for each agenda item, as reflected in the body of the present report:

Improper use of treaties

69. **It was decided that the subcommittee should continue its work according to the following mandate: drafting a new Commentary on article 1 of the Model that would include both practical examples and possible wording of anti-abuse clauses focusing on improper use by taxpayers. It was suggested that in choosing the examples particular reference should be made to misuses affecting developing countries and to responses which would be feasible for such countries. Attention should also be paid to the relationship between treaties and domestic anti-abuse rules. To better reflect its work, the subcommittee would henceforth be referred to as the subcommittee on improper use of treaties.**

70. **It was also decided that Bernell Arrindell would join the subcommittee.**

Mutual assistance in collection of taxes

71. **The Committee adopted the article and its Commentary for inclusion in the next version of the Model.**

Definition of permanent establishment

72. **The subcommittee was invited to continue its work. Attention should be paid primarily to taxation of services related to articles 14 and 5 (including the possibility of deleting article 14 and adjusting article 5 to retain an appropriate balance of the taxing rights currently available under article 14) and to taxation of technical fees. As a subsidiary part of its work, the subcommittee would also address the question of taxation on a net or gross basis and the possible need for definition of the terms "business" and "enterprise". The subcommittee was mandated to propose a draft article and Commentary, reflecting both its further work and what had been agreed during the present session. The Secretariat was asked to assist the subcommittee in its work of drafting the Commentary. It was decided that Erwin Silitonga and Eduardo Zaidenzstat Capnikas would join the subcommittee.**

73. **A number of other points, such as taxation of fisheries and electronic commerce, were also raised. The treatment of those issues was left for further consideration.**

Taxation of development projects

74. **The Committee took note of the document and invited the International Tax Dialogue to do further work, through a process that would allow donor agencies to participate. Mr. Thuronyi was invited to prepare a report on that work. The expected report would include more in-depth analysis and case studies that would highlight the impact of tax exemptions in different situations. Countries were invited to provide such case studies to Mr. Thuronyi.**

Exchange of information

75. **The Committee invited the subcommittee to work towards finalizing the proposed article and Commentary on exchange of information in the light of the discussion, so that the Committee would be in a position to agree to the suggested changes at the next session. The Committee decided that Mr. Ciocca would join the subcommittee. The Committee also invited Mr. McIntyre to expand on his work by providing more details on what such a code of conduct would contain.**

Revision of the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries

76. **The Committee acknowledged the need for updating the Manual, taking into account changes to the Model and its Commentary. Emphasis was placed on the need for clarity and usefulness for treaty negotiators. It was agreed that priority should be given to the inclusion of practical examples involving treaties between both developed and developing countries, some of which could be taken from the Commentary. The working group was therefore invited to work closely with the other working groups and subcommittees charged with updating the Model, with a view to delivering a revised Manual to the Committee by the end of its term. It was agreed that membership of the working group should be expanded. It was decided that Bernell Arrindell, Rowena G. Bethel and the observer from Germany (Wolfgang Lasars) would be added.**

Treatment of Islamic financial instruments

77. **It was decided that further work was needed to obtain a better understanding of the issues involved. It was felt that there should be guidance on those issues under either the Model or the Manual. That would be determined after further work had been presented to the Committee. The new working group would in particular draw upon the assistance of Andrew Dawson, observers from Qatar (Salah Gueydi), the Sudan (Gabir Saad El Din), Malaysia (Khodijah Abdullah), the OECD (Jacques Sasseville) and the IMF (Victor T. Thuronyi) under the coordination of Mr. Al-Moftah. The working group would be referred to as the working group on treatment of Islamic financial instruments.**

Dispute resolution

78. **It was decided to set up a new subcommittee on dispute resolution to address that issue in place of the current working group. The subcommittee was invited to produce a report. Attention would be paid both to the ways of improving dispute settlement and of giving practical guidance to make mutual agreement procedures under existing treaties as effective as possible. Mr. Waldburger was appointed coordinator. The subcommittee would also comprise Habiba Louati, Frank Mullen, Pascal Saint-Amans, Serafin U. Salvador Jr., and observers from Australia (Paul McBride), Viet Nam (Dang Ngoc Minh), and the IBFD (Hubertus Bierlaagh).**

Annex

Draft resolution recommended for adoption by the Economic and Social Council

Committee of Experts on International Cooperation in Tax Matters

The Economic and Social Council,

Recalling its resolution 2004/69 of 11 November 2004, in which the Council decided that the Ad Hoc Group of Experts on International Cooperation in Tax Matters should be renamed the Committee of Experts on International Cooperation in Tax Matters,

Recognizing the call made in the Monterrey Consensus of the International Conference on Financing for Development[1] for the strengthening of international tax cooperation through enhanced dialogue among national tax authorities and greater coordination of the work of the concerned multilateral bodies and relevant regional organizations, giving special attention to the needs of developing countries and countries with economies in transition,[2]

Taking note of the report of the Secretary-General on the implementation of and follow-up to commitments and agreements made at the International Conference on Financing and Development[3] and the recommendations contained therein,

Recognizing the need for an inclusive, participatory and broad-based dialogue on international cooperation in tax matters,

Noting the activities developing within the concerned multilateral bodies and relevant regional organizations,

1. *Takes note with appreciation* of the report of the Committee of Experts on International Cooperation in Tax Matters on its second session and the significant progress of the Committee's work;

2. *Notes* that the Committee has broken new ground in working on new and emerging issues, such as services, improved dispute resolution, tax issues related to Islamic financial instruments, and the taxation of development projects, as well as adopting a new article and Commentary on the developing area of mutual assistance in enforcement of tax debts;

3. *Recognizes* that the Committee agreed to create, as necessary, ad hoc subcommittees and working groups composed of experts and observers who would work throughout the year according to the Committee's rules of procedure to prepare and determine the supporting documentation for the agenda items, including requests for papers by independent experts, for consideration at its regular session;

---

[1] *Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002* (United Nations publication, Sales No. E.02.II.A.7), chap. I, resolution 1, annex.

[2] Ibid., para. 64.

[3] A/58/216.

4. *Notes* that four subcommittees on substantive matters, namely, treaty abuses, mutual assistance in collecting tax debts (which finalized its work in November 2006), definition of permanent establishment, and exchange of information, and two working groups, on arbitration in taxation matters and on the United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, were created at the first session of the Committee;

5. *Notes* that the existing working group on arbitration in taxation matters has been reconstituted as a subcommittee on dispute resolution and that a new working group on treatment of Islamic financial instruments has been created;

6. *Recognizes* that, while so far subcommittees have used electronic communications and that that will continue to be the main method of work, the intensified pace of drafting of highly technical documents necessitates that subcommittees undertake some face-to-face meetings;

7. *Recognizes* that the participation in subcommittee meetings by members from developing countries and countries with economies in transition is critical to ensuring an inclusive and effective completion of the drafting activities of the subcommittees;

8. *Notes with gratitude* the establishment of the trust fund by the Secretary-General to supplement regular budget resources;

9. *Encourages* member countries to operationalize the trust fund through their voluntary contributions;

10. *Invites* the Committee to continue to organize training workshops for developing countries and countries with economies in transition as part of the work required to carry out its mandate, which includes making recommendations on capacity-building and providing technical assistance;

11. *Requests* the necessary actions to provide in the United Nations regular programme budget for the biennium 2008-2009 the additional resources needed for face-to-face subcommittee and working group meetings with special reference to ensuring the full and effective participation of members of those subcommittees from developing countries and countries with economies in transition and with priority given to subcommittees on permanent establishment and improper use of treaties;

12. *Requests* the necessary actions to provide in the United Nations regular programme budget for the biennium 2008-2009 the additional resources needed for capacity-building workshops in developing countries and countries with economies in transition;

13. *Decides* that the third session of the Committee shall be convened in Geneva from 29 October to 2 November 2007;

14. *Approves* the provisional agenda for the third session of the Committee, as contained in paragraph 63 of the report on its second session.

07-21425 (E) 050207